



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,383	02/24/2004	Ernest J. Storrer	INIS-1-1003	6508
25315 7590 07/20/2011 BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104				
EXAMINER				
LU, JIPING				
ART UNIT		PAPER NUMBER		
3743				
NOTIFICATION DATE		DELIVERY MODE		
07/20/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing-patent@blacklaw.com  
blgdocketing@blacklaw.com

**Office Action Summary****Application No.**

10/785,383

**Applicant(s)**

STORRER ET AL.

**Examiner**

JIPING LU

**Art Unit**

3743

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 43-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-942)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/7/11 has been entered.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 43-47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed limitations regarding *similarly-shaped* members (claim 43), *flexible* membrane (claim 43), *at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands (claim 46) and the first direction is *substantially* non-parallel relative to the second direction (claim 47) constitute new matter which are not

supported by the originally filed specification. Fig. 6D does not support the claimed similarly-shaped members because Fig. 6D is only a top-view of the grid. The originally filed specification also fails to disclose the claimed *flexible* membrane (claim 43), *at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands (claim 46) and the first direction is *substantially* non-parallel relative to the second direction (claim 47) because page 25, lines 2-3 only disclose an impermeable membrane, page 23, lines 20-25 and Figs. 6C and 6D do not disclose *at least one* of the first and second plurality of members of the grid comprises generally parallel rows of strands (claim 46), and page 23, lines 22 to page 24, line 2 and Fig 6C, 6C do not disclose the first direction is *substantially* non-parallel relative to the second direction (claim 47).

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 43, 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenander (U. S. Pat. 4,203,714) in view of Ferrand (U. S. Pat. 3,150,029) or De Winter (U. S. Pat. 3,811,287) and Creskoff (U. S. Pat. 3,506,747).

Wenander shows an apparatus attachable to a vacuum source for removing moisture from a building structure comprising a grid2 , a tunnel-shaped plate 3 supportable on a portion of the grid 2, the plate having at least one vacuum attachment port (between 3 and 4) to permit fluid communication between the building structure and a vacuum source. Ferrand shows a grid having a first plurality of members 2 arranged in a first direction and a second plurality of

similarly-shaped members 1 arranged in a second direction, the second plurality of members 1 supported on the first plurality of member 2 to form a three-dimensional lattice structure (Fig. 7), the first direction is different and substantially non-parallel relative to the second direction, the grid configurable to be place on at least a portion of the building structure. The first and second plurality of members of the grid comprise generally parallel rows of strands (Figs. 1, 3-7). De Winter shows a grid having a first plurality of members 4 arranged in a first direction and a second plurality of similarly-shaped members 5 arranged in a second direction, the second plurality of members 5 supported on the first plurality of member 4 to form a three-dimensional lattice structure (Fig. 1), the first direction is different and substantially non-parallel relative to the second direction, the grid configurable to be place on at least a portion of the building structure. The first and second plurality of members of the grid comprise generally parallel rows of strands (Figs. 1, 3). Creskoff teaches a concept of providing grid and plate and vacuum attachment port with sealing membrane 24-32 for sealing the structure among grid, plate and vacuum attachment port. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Wenander to include a three -dimensional lattice structure grid as taught by Ferrand or De Winter in order to pursue an intended use and to further modify the apparatus of Wenander to include sealing membrane as taught by Creskoff in order to seal the structure among grid, plate and vacuum attachment port and therefore improve the moisture removal efficiency. As to the claimed plastic sheet material of sealing membrane, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the sealing membrane made by any desired material in order to pursue an intended use and obtain a predictable sealing result, since it has been held to

be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. As to the claimed limitations in last three lines of claim 43, it is a common practice in the sealing art to extend sealing membrane past a periphery of one component for sealing that component relative to other component.

6. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wenander (U. S. Pat. 4,203,714) in view of Ferrand (U. S. Pat. 3,150,029) or De Winter (U. S. Pat. 3,811,287) and Creskoff (U. S. Pat. 3,506,747) as applied to claim 43 above, and further in view of Rountree (U. S. Pat. 1,713,398).

The apparatus of Wenander as modified by Ferrand or DeWinter and Creskoff as above includes all that is recited in claim 44 except for the vacuum attachment port includes a barbed nozzle. Rountree teaches a concept of providing vacuum attachment port with a barbed nozzle (claim 1) same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the apparatus of Wenander to include a barbed nozzle as taught by Rountree in order to pursue an intended use.

### ***Response to Arguments***

7. Applicant's arguments filed 2/7/11 have been fully considered but they are not persuasive.

The declaration under 37 CFR 1.132 filed 2/7/11 is insufficient to overcome the rejections of claims 43-47 based upon insufficiency of disclosure under 35 U.S.C. 112, first paragraph; and references applied under 35 U.S.C. 103 as set forth in the last Office action

because: it include(s) statements, paragraphs 7-13 which amount to an affirmation that the affiant has never seen the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716. The applicant has explained why the prior art patents are non-analogous. The examiner disagrees. In this case, it is the examiner's position that the cited prior art patents are extremely relevant to the claimed subject matter and intended solutions of the invention. The examiner has clearly explains the relevance in the rejection above. In paragraphs 14-18 of the Rule 132 Declaration, the applicant states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references; they would still be unable to solve the problem. See MPEP § 716.04. In the Rule 132 Declaration, the applicant refers the water or moisture removal industry of the invention described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

In response to the applicant's arguments of 2/7/11, first, claims fail to define over the prior art references. Examiner disagrees the originally filed specification supports the claimed limitations for the reasons as shown in above rejection under 112 first paragraph. Second, on pages 6-7 of the Remarks, the applicant argues that the examiner failed to establish a prime Facie

evidence of obviousness in the claim rejection. The examiner disagrees because the examiner has adopted the objective standard of the obviousness and the Supreme Court's case law under KSR. The claim rejection above has explained the examiner's position. Third, on pages 8-10 of the Remarks, the applicant argues the prior art references as applied are non-analogous art. The examiner does not agree because the prior art references were found in the same area of field of endeavor and are solving the same problem, e.g. removal of water contents in building material. Therefore, it can not be said the prior art references are non-analogous.

### *Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 571 272 4878. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KENNETH RINEHART can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jiping Lu/  
Primary Examiner  
Art Unit 3743

J. L.